



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

January 7, 1993

Honorable Mike Driscoll
Harris County Attorney
1001 Preston Road, Suite 634
Houston, Texas 77002-1891

Letter Opinion No. 93-2

Re: Whether the Harris County Flood Control District may engage in wetland mitigation programs pursuant to the Wetlands Mitigation Act, V.T.C.S. art. 5421u (RQ-377)

Dear Mr. Driscoll:

On behalf of the Harris County Flood Control District (the "district"), you have asked for an opinion concerning the following questions:

1. Is the district authorized to engage in wetlands mitigation programs under the Wetlands Mitigation Act, V.T.C.S. art. 5421u (the "act")?
2. If so, is the district authorized to engage in the activities set forth in the act?
3. Is the district authorized to enter into a contract with another "political subdivision" under section 6.04 of the act to maintain a wetlands mitigation bank? and
4. Does section 6.06(a) of the act require "political subdivisions" to hold public hearings before adopting a wetlands mitigation program?

The legislature created the district to develop and implement plans to conserve and reclaim flood-lands, and to control the rivers, streams, and flood-waters of Harris County. Acts 1937, 45th Leg., ch. 360, § 1, at 714.¹ The Commissioners Court of Harris County is the governing body of the district. *Id.* Harris County and the district are distinct political entities. Tex. Const. art. XI, § 1; Local Gov't Code § 71.001.

The Wetlands Mitigation Act authorizes "[a]ny state agency and all political subdivisions" to establish and maintain mitigation banks, land changed to create wetlands

¹Many of the laws pertaining to particular water districts were neither repealed nor carried into the Water Code. Their texts are to be found in the General and Special Laws of Texas. See Water Code Aux. Laws, table II, at 113-14.

habitat to offset adverse impacts on natural wetlands. V.T.C.S. art. 5421u, § 6.02; *see also id.* § 6.01(3) (defining "mitigation bank"). A "political subdivision" which creates a mitigation bank is authorized to acquire land; to adopt and enforce wetlands use and control measures; to cooperate with federal agencies in studying wetlands conservation; to take steps to improve long-range management of wetlands; and to borrow money and issue bonds. *Id.* §§ 6.02, 6.03.

You ask whether the district is a "political subdivision" authorized to conduct wetlands mitigation programs under the act. The act does not authorize *all* political subdivisions to conduct wetland mitigation programs; rather the act only authorizes "political subdivisions" as defined in the act to do so. The act defines a "political subdivision" as "any county with a population of 2.1 million or more or a county adjacent to that county." *Id.* § 6.01(6). The district does not fall within this definition, and therefore is not authorized to engage in wetlands mitigation programs under the act.

You suggest that language in section 6.06(a) implies a broader definition of the term "political subdivision." We disagree for two reasons. First, the language in section 6.06(a) upon which you rely is surplusage inadvertently left in the act following the deletion of references to "county-wide political subdivisions."² It is not intended to broaden the meaning of the term "political subdivision." Second, and more importantly, we cannot ignore the express and unambiguous definition of "political subdivision" in section 6.01(6). It is a well-settled rule of statutory construction that when the legislature defines a term in an act, the term should be assigned the same meaning in subsequent sections of the act. *Hayek v. Western Steel Co.*, 478 S.W.2d 786, 793 (Tex. 1972) (collecting cases).

You also ask whether the district may enter into a contract to maintain a mitigation bank under section 6.04 of the act. That section provides as follows:

A state agency or *political subdivision* may enter into a contract with another state agency or *political subdivision* for the purposes of jointly paying all or part of the costs of the acquisition, design,

²The Wetlands Mitigation Act was enacted in 1991 by article 6 of Senate Bill No. 2. Acts 1991, 72d Leg., 1st C.S., ch. 3, §§ 6.01-.07 at 74-77. An earlier version of the legislation, House Bill 2653, referred to both a "political subdivision" and a "[c]ounty-wide [p]olitical [s]ubdivision." *See* H.B. 2653 § 1, 72d Leg. (1991) (not enacted). A "[c]ounty-wide [p]olitical [s]ubdivision" was defined in House Bill 2653 as "a river authority or a political subdivision comprising at least all of one county or comprising parts of two or more counties." *Id.* House Bill 2653 also included a version of current section 6.06(a) which required approval of the county commissioners court before a "county-wide political subdivision" could initiate a wetlands mitigation program. *Id.* § 6. The definition of a "county-wide political subdivision" was subsequently removed from Senate Bill 2, and the term "county-wide" was deleted throughout the legislation, including section 6.06(a). Section 6.06(a), however, was not further amended to thoroughly conform to this change.

construction, improvement, or maintenance of a wetlands mitigation bank including any buffer zone.

(Emphasis added.) As previously discussed, the district is not a "political subdivision" within the meaning of the act. Accordingly, the district is not eligible to enter into a contract under section 6.04 of the act.

Finally, you also ask whether a political subdivision must conduct public hearings before adopting a wetlands regulation program. Section 6.06(a) of the act provides that "[n]o political subdivision may institute a wetlands regulation program unless the commissioners court . . . grants its consent and approval thereto *after conducting a public hearing on the subject.*" (Emphasis added.) Accordingly, a political subdivision must hold a public hearing before instituting a wetlands regulation program.

S U M M A R Y

The Harris County Flood Control District is not a "political subdivision" within the meaning of the Wetlands Mitigation Act, V.T.C.S. art. 5421u, and therefore is not authorized to establish a mitigation bank or to enter into contracts pursuant to the act. Section 6.06(a) of the act requires a political subdivision to hold a public hearing before adopting a wetlands regulation program.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee